

**FILED**

SEP 26 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE STATIC RANDOM ACCESS MEMORY  
(SRAM) ANTITRUST LITIGATION

No. M:07-cv-01819 CW  
MDL No. 1819

ORDER GRANTING AS  
MODIFIED PARTIES'  
STIPULATION FOR  
APPOINTMENT OF  
DISCOVERY MASTER

WHEREAS, pursuant to Supplemental Case Management Order #1,  
the parties have met and conferred regarding the selection of a  
Special Master to oversee Discovery in this matter.

WHEREAS, the parties have agreed upon a nominee, Hon. Fern M.  
Smith (Ret.), and she has agreed to serve as a Discovery Master in  
this matter;

NOW, THEREFORE, the parties by and through their respective  
counsel of record, hereby stipulate and agree as follows:

1. The Discovery Master shall be appointed to resolve  
discovery disputes which may arise among and between the parties in  
accordance with Federal Rules of Civil Procedure 1 and 26 through  
37 and the Local Civil Rules of the United States District Court  
for the Northern District of California. All discovery motions and  
other discovery disputes in the above captioned action shall be

1 decided by a the Discovery Master pursuant to Federal Rule of Civil  
2 Procedure 53.

3 2. The Discovery Master shall be Hon. Fern M. Smith (Ret.).  
4 Her business address is: Two Embarcadero Center, Suite 1500, San  
5 Francisco, CA 94111.

6 3. Judge Smith shall serve as the Discovery Master until all  
7 issues herein have been finally disposed of or determined or until  
8 she shall withdraw in accordance with applicable law. If at any  
9 time she becomes unavailable or unable to serve as the Discovery  
10 Master, the parties shall confer to present an alternative  
11 agreed-upon designee to the Court. In the event that the parties  
12 cannot agree to an alternate designee, then the Court shall appoint  
13 a Discovery Master.

14 4. The Discovery Master shall have the authority to set the  
15 date, time and place for all hearings determined by the Discovery  
16 Master to be necessary; to preside over hearings (whether  
17 telephonic or in-person); to take evidence in connection with  
18 discovery disputes; to issue orders resolving discovery motions  
19 submitted to the Discovery Master; to conduct telephonic  
20 conferences to resolve discovery disputes arising during  
21 depositions; to issue orders awarding non-contempt sanctions,  
22 including, without limitation, the award of attorney's fees, as  
23 provided by Rules 37 and 45.

24 5. All discovery disputes shall be resolved by motion  
25 (except those arising during a deposition which the Discovery  
26 Master determines can be resolved by telephonic conference during  
27 the deposition). The moving party shall first identify each  
28

1 dispute, state the relief sought, and identify authority supporting  
2 the requested relief in a meet and confer letter that shall be  
3 served on all parties against whom relief is sought by facsimile or  
4 electronic mail. The parties to the discovery dispute shall have  
5 five court days from the date of service of that letter to attempt  
6 to resolve the dispute. If the dispute has not been resolved  
7 within five court days after such service, the moving party may  
8 seek relief from the Discovery Master by formal motion or letter  
9 brief, at the moving party's option. The opposing party shall have  
10 ten court days from the date of service of the motion or letter  
11 brief to submit a formal opposition or response. Any reply brief  
12 or letter brief shall be served within five court days from the  
13 date of service of a formal opposition or response. The hearing on  
14 the motion shall take place within ten court days of the service of  
15 any reply brief or letter unless (a) the parties agree to another  
16 hearing date or agree that no hearing is necessary; (b) the  
17 Discovery Master determines that no hearing is necessary; or (c)  
18 the Discovery Master is not available, in which case the hearing  
19 shall take place on the Discovery Master's first available date.  
20 The foregoing shall not prohibit (i) the parties from agreeing to  
21 alternate procedures, or (ii) a party from seeking the Discovery  
22 Master's immediate resolution of a dispute or resolution of a  
23 dispute upon shortened time upon a showing of good cause why a  
24 party would be prejudiced absent prompt resolution. Service of any  
25 document by fax or electronic mail prior to 6:00 p.m. (PST) shall  
26 constitute service on that day.

27 6. The Discovery Master's orders resolving discovery  
28

1 disputes, reports and recommendations pursuant to Rule 53(e) or (f)  
2 shall be treated as rulings made by a Magistrate Judge of the  
3 United States District Court.

4 7. A court reporter shall transcribe any hearing or other  
5 proceeding before the Discovery Master, unless otherwise agreed to  
6 by the parties and the Discovery Master.

7 8. The cost of any proceeding before the Discovery Master,  
8 including the fees of the Discovery Master, the fees of court  
9 reporters who transcribe hearings or other proceedings before the  
10 Discovery Master, and the fees of any other person necessary to the  
11 efficient administration of the proceeding before the Discovery  
12 Master, shall be paid one-third by Direct Purchaser Plaintiffs,  
13 one-third by Indirect Purchaser Plaintiffs and one-third by  
14 Defendants then in the case, consistent with the Federal Rules of  
15 Civil Procedure, unless the Discovery Master Orders otherwise. In  
16 instances where fewer than all parties are involved in a particular  
17 proceeding before the Discovery Master, the fees of such proceeding  
18 shall be allocated pro rata amongst the parties to that proceeding.  
19 By agreeing to share costs among the parties, no party waives its  
20 right to seek recovery or reimbursement for such costs from any  
21 other party.

22 9. The Discovery Master shall be compensated according to  
23 her regular hourly rate of \$700.

24 10. Pursuant to Federal Rule of Civil Procedure 53(b)(2), the  
25 Discovery Master shall proceed with all reasonable diligence.

26 11. Based on an affidavit filed by Honorable Fern M. Smith  
27 (Ret.) pursuant to 28 U.S.C. § 455 and Federal Rule of Civil  
28

1 Procedure 53(b)(3), the parties are not aware that she has a  
2 relationship to the parties, to counsel, to the action, or to the  
3 Court that would require disqualification of a judge under 28  
4 U.S.C. § 455, and based thereon the parties expressly waive any  
5 ground for disqualification disclosed therein of the Hon. Fern M.  
6 Smith to serve as master in these proceedings.

7 12. The Discovery Master shall not have ex parte  
8 communications with a party or counsel.

9 13. The Discovery Master is hereby authorized to receive and  
10 consider information and documents designated "CONFIDENTIAL" and  
11 "HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY" pursuant to the  
12 Stipulated Protective Order entered in this matter. The Discovery  
13 Master agrees to be bound by said Protective Order.

14 14. The parties shall provide the Discovery Master with a  
15 list of any pending discovery motions and courtesy copies of their  
16 briefs on each. On all future motions, the parties shall file with  
17 the Clerk only the original motion papers<sup>1</sup> and serve a courtesy  
18 copy on the Discovery Master. For sealed documents, the parties  
19 shall follow Civil Local Rule 79-5 except that the requested sealed  
20 document shall be lodged with the Discovery Master and not with the  
21 Clerk. If the Discovery Master orders the document to be filed  
22 under seal, the party seeking to file the document shall submit to  
23 the Clerk one copy of the original document and the Discovery  
24 Master's sealing order for filing under seal. Otherwise, the  
25 lodged document shall be returned by the Discovery Master to the

26 \_\_\_\_\_  
27 <sup>1</sup>No chambers' copy shall be submitted to the Clerk.

1 submitting party and the document shall not be placed in the file.

2 15. When the Discovery Master issues an order on a party's  
3 motion, the moving party shall file a notice of order indicating  
4 the docket number of the original motion and attaching a copy of  
5 the order.

6 16. The Discovery Master shall preserve and maintain all  
7 documents and materials submitted by the parties as well as all  
8 orders, reports and recommendations issued by the Discovery Master.  
9 These documents, materials, orders, reports and recommendations  
10 shall be the record of the Discovery Master's activities and shall  
11 be maintained in chronological order until the Discovery Master is  
12 informed by the parties that all issues herein have been finally  
13 disposed of and determined.

14 17. All third parties subject to discovery requests or  
15 deposition in this litigation shall be bound by the terms of this  
16 Stipulation and Order.

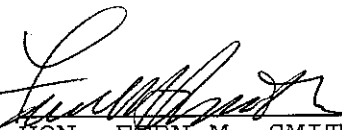
17  
18 IT IS SO ORDERED.

19 Dated: \_\_\_\_\_

\_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge

21  
22 I consent to serve as Discovery Master in the above-referenced  
23 matter consistent with this order

24  
25 Dated: Sept. 26, 2007

  
\_\_\_\_\_  
HON. FERN M. SMITH

1 submitting party and the document shall not be placed in the file.


2 15. When the Discovery Master issues an order on a party's  
3 motion, the moving party shall file a notice of order indicating  
4 the docket number of the original motion and attaching a copy of  
5 the order.

6 16. The Discovery Master shall preserve and maintain all  
7 documents and materials submitted by the parties as well as all  
8 orders, reports and recommendations issued by the Discovery Master.  
9 These documents, materials, orders, reports and recommendations  
10 shall be the record of the Discovery Master's activities and shall  
11 be maintained in chronological order until the Discovery Master is  
12 informed by the parties that all issues herein have been finally  
13 disposed of and determined.

14 17. All third parties subject to discovery requests or  
15 deposition in this litigation shall be bound by the terms of this  
16 Stipulation and Order.

17  
18 IT IS SO ORDERED.

19 Dated: SEP 26 2007

  
CLAUDIA WILKEN  
United States District Judge

21  
22 I consent to serve as Discovery Master in the above-referenced  
23 matter consistent with this order

24  
25 Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. FERN M. SMITH